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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/602,864	06/25/2003	Charles Moody	361.2868	2108	
7590 09/09/2004			EXAMINER		
Peter A. Borsari			MAH, CHUCK Y		
Suite 206 2001 Jefferson Davis Hwy.			ART UNIT	PAPER NUMBER	
Arlington, VA		3676			
		DATE MAILED: 09/09/2004			

Please find below and/or attached an Office communication concerning this application or proceeding.

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		Application No.	Applicant(s)	Applicant(s)			
Office Action Summary		10/602,864	MOODY, CHARLI	MOODY, CHARLES			
		Examiner	Art Unit				
		Chuck Mah	3676				
- 7 Period for F	The MAILING DATE of this communication app Reply	pears on the cover sheet with th	e correspondence ad	ldress			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).							
Status							
1)□ Re	esponsive to communication(s) filed on						
2a) <u></u> ⊤h	nis action is <b>FINAL</b> . 2b)⊠ This	action is non-final.					
3) <u>□</u> Si	nce this application is in condition for allowa	nce except for formal matters, p	prosecution as to the	e merits is			
clo	osed in accordance with the practice under E	x parte Quayle, 1935 C.D. 11,	453 O.G. 213.				
Disposition	of Claims						
4)⊠ CI	aim(s) 1-20 is/are pending in the application.						
	) Of the above claim(s) is/are withdraw						
5) <u></u> Cla	5) Claim(s) is/are allowed.						
	aim(s) <u>1-20</u> is/are rejected.						
	aim(s) is/are objected to.						
8)∐ Cla	aim(s) are subject to restriction and/o	election requirement.					
Application	Papers						
9) <u></u> The	e specification is objected to by the Examine	r.					
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.							
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11)∐ The	11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority und	ler 35 U.S.C. § 119						
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of:							
1. Certified copies of the priority documents have been received.							
2. Certified copies of the priority documents have been received in Application No							
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).							
* See the attached detailed Office action for a list of the certified copies not received.							
The second of th							
A44-1							
Attachment(s)  1) Notice of References Cited (PTO-892)  4) Interview Summary (PTO-413)							
2) Notice of	Draftsperson's Patent Drawing Review (PTO-948)	4) Ll Interview Summa Paper No(s)/Mail	Date				
	on Disclosure Statement(s) (PTO-1449 or PTO/SB/08) (s)/Mail Date	5)  Notice of Informa 6)  Other:	l Patent Application (PTO	P-152)			

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### **DETAILED ACTION**

## Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of claims 1-20 is confusing. For example in claim 1, it is understood that "A sanitary door opener adapted to...", suggesting an opener alone, is being claimed. Later in the claim the opener is said to be "installed one said door". It is not clear whether applicant attempts to claim an opener-door combination or an opener subcombination. For examination purpose all claims are treated as claiming an opener alone.

### Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 4. Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Campbell et al. (4,817,239).
- 5. Claims 1, 4 and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Borchers (2,447,389).

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Note that intended use is given no patentable weight. Both '239 and '389 meet the invention as claimed.

## Claim Rejections - 35 USC § 103

- 6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 7. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al. '239.

'239 does not show using apertures in the front face to secure the opener.

However, '239 teaches using screws secure the rear face. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form addition apertures in the front face to receive screws since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

As to the adhesive, it would have been an obvious matter of design choice to use adhesive as an alternative to attach the opener, since applicant has not disclosed that use adhesive solves any stated problem or is for any particular purpose and it appears that using screws would perform equally well. *In re Kuhle, 188 USPQ* 

As to claims 4-5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose brass or stainless steel to form the opener, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin, 125 USPQ 416*.

As to claim 6, it would have been obvious to one skilled in the art to make the opener from a single sheet of material, since it has been held that forming in one piece an article which has formerly been formed in two pieces involves only routine skill in the art.

## Allowable Subject Matter

- 8. Claim7-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
- 9. Claims 12-20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

#### Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Mah whose telephone number is (703) 308-0676. The examiner can normally be reached on 5/4-9.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

©huck-Mah Primary Examiner Art Unit 3676

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